A Missed Opportunity for the Armed Career Criminal Act?: A Comment on *Stitt*, *Sims*, and *Stokeling*

S. MATTHEW KRSACOK*

I. INTRODUCTION

"[M]addeningly abstract and untethered to the real world," "a system that each year proves more unworkable," "[yielding] bizarre and arbitrary effects" – these are just a few voices in the chorus of complaints levied by judges, justices, prosecutors, and academics against the "categorical approach" to the Armed Career Criminal Act (ACCA).[1]

ACCA provides a fifteen-year mandatory minimum sentence for offenders who illegally possess a firearm and have three prior convictions for a "violent felony" or "serious drug offense."[2] The categorical approach is the method for determining whether an offense or prior conviction fits within ACCA's definition of "violent felony."[3] Under the categorical approach, sentencing courts are prohibited from looking at the actual facts underlying a conviction, and instead must make a determination by looking solely at the statutory elements of the crime.[4] This willful blindness to factual criminal conduct in favor of a complex legal doctrine is often criticized for producing unfair and counterintuitive results, taxing judicial economy, and allowing habitual criminals to escape punishment based on legal technicalities alone.[5]

---

* Executive Editor, *Ohio State Law Journal*; J.D. Candidate 2020, The Ohio State University Moritz College of Law; B.A. 2017, The Ohio State University. Many thanks to Jonathan Wroblewski, Michelle Morales, and Jordan Leiter for exemplifying the values of public service and patiently teaching me this oftentimes difficult topic as a summer intern at the United States Department of Justice, Office of Policy and Legislation; to Professor Christopher J. Walker, Director of the Moritz Washington Summer Program, for making such an opportunity possible and for his unwavering commitment to putting students first; and to the editors of the *Ohio State Law Journal* for all their hard work on this piece.

[1] *See* Tristan v. United States, No. 6:16-cv-01137-AA, 2018 WL 3117637, at *3 n.2 (D. Or. June 25, 2018) (cataloguing a list of complaints by federal judges and academics about the categorical approach) (quoting Mathis v. United States, 136 S. Ct. 2243, 2258 (2016) (Kennedy, J., concurring); United States v. Valdiva–Flores, 876 F.3d 1201, 1211 (9th Cir. 2017) (O'Scannlain, J., concurring)).

[2] 18 U.S.C. § 924(e)(1) (2012).

[3] *See generally* U.S. SENTENCING COMM'N, CATEGORICAL APPROACH: 2016 ANNUAL NATIONAL SEMINAR (2016), https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2016/backgrounder_categorical-approach.pdf [https://perma.cc/B2EC-ZA8H] (outlining "the four steps in the categorical approach and defin[ing] key term [sic] frequently used in the analysis").

[4] *Id.*

[5] *See, e.g.*, Sheldon A. Evans, *Punishing Criminals for Their Conduct: A Return to Reason for the Armed Career Criminal Act*, 70 OKLA. L. REV. 623, 624–25 (2018) (describing the background of *Mathis*, where a habitual child molester with multiple burglary

The Supreme Court decided three ACCA cases in the October 2018 term: *United States v. Stitt*, *United States v. Sims*, and *Stokeling v. United States*.[6] The increased attention on ACCA brought by these cases has spurred renewed criticisms of the many problems associated with the categorical approach.[7] Despite the continuing debate over the viability of ACCA and the categorical approach, the current composition of the Court makes it unclear (if not unlikely) that the Court would have been willing to make fundamental changes to nearly thirty years of ACCA precedent.[8] While many call for the abolition of ACCA and the categorical approach entirely, this Note will argue that a less radical approach would have sufficed to bring focus and legitimacy back to ACCA doctrine.[9]

---

convictions escaped enhanced sentencing based on categorical approach application to an Iowa burglary statute).

[6] United States v. Stitt, 139 S. Ct. 399 (2018); United States v. Sims, 854 F.3d 1037 (8th Cir. 2017), *vacated and remanded sub nom.* United States v. Stitt, 139 S. Ct. 399 (2018); Stokeling v. United States, 139 S. Ct. 549 (2018).

[7] *See, e.g.*, Douglas A. Berman, *SCOTUS Grants Cert on Yet Another Set of ACCA Cases, This Time to Explore When Burglary Qualifies as "Burglary,"* SENT'G L. & POL'Y (Apr. 23, 2018, 9:59 AM), https://sentencing.typepad.com/sentencing_law_and_policy/2018/04/scotus-grants-cert-on-yet-another-set-of-acca-cases-this-time-to-explore-when-burglary-qualifies-as-.html [https://perma.cc/5CTD-38QC] (expressing annoyance because "issues related to the application of the Armed Career Criminal Act continued to be the focal point of so much SCOTUS activity"); *see also* Thomas T. Cullen, Opinion, *Protecting Americans from Violent Offenders*, WASH. TIMES (Aug. 2, 2018), https://www.washingtontimes.com/news/2018/aug/2/why-congress-should-take-action-on-the-armed-caree/ [https://perma.cc/MBJ4-NUSK] (arguing that the results from the ACCA have been "inconsistent and absurd").

[8] Justice Alito and possibly Justices Ginsburg and Breyer are the only Justices currently on the Court who have expressed an interest in voting to overrule the categorical approach. *See* Evan Tsen Lee, Mathis v. U.S. *and the Future of the Categorical Approach*, 101 MINN. L. REV. HEADNOTES 263, 270–71 (2016), http://www.minnesotalawreview.org/wp-content/uploads/2016/11/Lee-1.pdf [https://perma.cc/G5M2-VADZ]. Justice Gorsuch and Justice Kavanaugh lack a sufficient Supreme Court record to fully evaluate their positions on this issue, however both faithfully applied ACCA and the categorical approach in their time as circuit court judges. *See* United States v. Haight, 892 F.3d 1271, 1279–81 (D.C. Cir. 2018) (Kavanaugh, J.); United States v. Huizar, 688 F.3d 1193, 1194 (10th Cir. 2012) (Gorsuch, J.). Finally, it was further unlikely that the Court would have deviated too far from established ACCA doctrine when the parties did not raise the argument in their briefs. The Court would probably not be willing to act *sua sponte* to overturn long held precedent regarding ACCA. *Cf.* Sessions v. Dimaya, 138 S. Ct. 1204, 1207, 1217 (2018) (finding it "significant" that the Government failed to argue for the abandonment of the "categorical approach" in favor of a fact-based approach to an immigration statute's "aggravated felony" definition).

[9] This Note does not dismiss the many ACCA critiques or innovative proposed ACCA fixes. There have been many compelling calls for overturning *Taylor* and the categorical approach entirely in favor of a conduct-based approach. *See, e.g.*, Mathis v. United States, 136 S. Ct. 2243, 2269–71 (2016) (Alito, J., dissenting); Descamps v. United States, 570 U.S. 254, 280–81 (2013) (Alito, J., dissenting). *See generally* Evans, *supra* note 5, at 623 (surveying state habitual-offender statutes, with a strong emphasis on conduct-based

For too long, courts have taken a myopic view of the categorical approach, losing sight of its fundamental purpose somewhere in the twenty-five year string of highly technical, "piecemeal," and "Scrabble-like" ACCA decisions.[10] The proper remedy to this affliction is to refocus on the original intents and purposes of ACCA and the categorical approach as articulated in the seminal case *Taylor v. United States*.[11] Federal courts should put less emphasis on procedural formalism, and should instead strive to accomplish ACCA's purpose of identifying violent career felons, while mitigating fairness and due process concerns.[12] *Stitt*, *Sims*, and *Stokeling* offered a critical opportunity to bring ACCA doctrine back down to the "real world" without completely giving up on the laudable goals of the categorical approach.[13]

This Note proceeds as follows: Part II will introduce the categorical approach, laying out how the doctrine applies to each of the three significant statutory components of the Armed Career Criminal Act—the enumerated-felonies clause, the elements clause, and the now defunct residual clause. In Part III, this Note will lay out the procedural, factual, and legal background of *Stitt, Sims*, and *Stokeling*. In Part IV, ACCA and the categorical approach's foundational values and purposes are explored and applied to each of these Supreme Court cases. Part V will briefly conclude.

II. ACCA AND THE CATEGORICAL APPROACH

The Armed Career Criminal Act provides a maximum sentence of life and minimum sentence of fifteen years for any felon caught illegally possessing a firearm with three prior convictions for a "violent felony" or "serious drug offense."[14] The ACCA statute defines a "violent felony" as "any crime

---

approaches). Some have gone as far as proposing a new agency to compile and maintain a list of qualifying state statutes. *See* Avi M. Kupfer, *A Comprehensive Administrative Solution to the Armed Career Criminal Act Debacle*, 113 MICH. L. REV. 151, 166 (2014). Recently, the United States Attorney General proposed a legislative fix to ACCA. *See* Jeff Sessions, U.S. Att'y Gen., Remarks Calling for a Legislative Fix to the Armed Career Criminal Act (Aug. 1, 2018), https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-calling-legislative-fix-armed-career-criminal [https://perma.cc/DKP8-N5M6]. *But see* Douglas A. Berman, *Senators Orrin Hatch and Tom Cotton Proposing* Johnson *Fix to Expand Reach of Armed Career Criminal Act*, SENT'G L. & POL'Y (Aug. 2, 2018, 12:51 AM), https://sentencing.typepad.com/sentencing_law_and_policy/2018/08/-senators-orrin-hatch-and-tom-cotton-proposing-johnson-fix-to-expand-reach-of-armed-career-criminal-.html [https://perma.cc/2QY3-S6L5] ("[T]he Armed Career Criminal Act is long overdue for a fix, but the solution presented here strikes me as problematic because it expands the reach of a severe mandatory minimum and still has ACCA's reach turn on prior offense definitions.").

[10] Begay v. United States, 553 U.S. 137, 150 (2008) (Scalia, J., concurring).

[11] Taylor v. United States, 495 U.S. 575 (1990).

[12] *Id.* at 581–82.

[13] *See* Tristan v. United States, No. 6:16-cv-01137-AA, 2018 WL 3117637, at *3 n.2 (D. Or. June 25, 2018).

[14] 18 U.S.C. § 924(e)(1) (2012). Of the two predicate offense definitions, the "violent felony" definition is more prolific and disputed than the "serious drug offense" definition,

punishable by imprisonment for a term exceeding one year . . . that has as an element the use, attempted use, or threatened use of physical force against the person of another" or "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another . . . ."[15]

Importantly, *Taylor v. United States* formally imposed a "categorical approach" on the process of determining what actually qualifies as a violent felony.[16] Under the categorical approach, the court adopts a willful blindness to the facts underlying each conviction.[17] Regardless of whether the defendant actually used violent force in the commission of the crime, the conviction will not qualify as a violent felony unless the elements of the crime pass muster under the categorical approach.[18] In this way, the categorical approach functions like an "on-off switch," meaning a state statute qualifies as a predicate offense in either all cases or none.[19] This has led to criticisms that the categorical approach creates a "windfall" for dangerous criminal offenders who are able to escape sentencing enhancement for crimes they actually committed with violent force.[20] Another common complaint is the unwieldiness and complexity of delving into the minutiae of state criminal law every time a sentence enhancement is challenged.[21]

The definition of "violent felony" has traditionally been broken down into three parts: the elements clause (sometimes called the "force" clause), the enumerated-felonies clause, and the residual clause.[22] The categorical approach applies uniquely to all three components.[23]

---

but ACCA drug cases are still prevalent. *See, e.g.*, United States v. Smith, 775 F.3d 1262, 1266–67 (11th Cir. 2014) (considering the general definition of a "drug trafficking aggravated felony").

[15] 18 U.S.C. § 924(e)(2)(B).

[16] *Taylor*, 495 U.S. at 602. This Note does not endeavor to recount the entire long and tortured history of the categorical approach. For a more in-depth analysis, see Evans, *supra* note 5, at 628–42.

[17] *Taylor*, 495 U.S. at 600–01.

[18] *Id.* at 602.

[19] Descamps v. United States, 570 U.S. 254, 268 (2013).

[20] *See* Lee, *supra* note 8, at 270.

[21] *See, e.g.*, Perez v. United States, 885 F.3d 984, 991 (6th Cir. 2018) (Sutton, J.) ("How odd to dissect the precise contours of all New York robbery convictions but one: the conviction of today's criminal defendant.").

[22] *See generally* 39 AM. JUR. 2D *Habitual Criminals, Etc.* § 27 (2018) (documenting applications of the ACCA).

[23] *Id.*

A. *The Elements Clause*

The first significant component of ACCA is the elements clause, also known as the force clause.[24] When trying to ascertain whether an offense qualifies as a violent felony under this clause, the sentencing judge will look at the crime of conviction's bare elements and determine if they necessarily require the use of "physical force."[25]

Like almost everything in ACCA doctrine, the precise meaning of the elements clause and the term "physical force" has been the subject of dispute.[26] In *Johnson v. United States*, the Supreme Court held that "physical force" in the elements clause should be interpreted to mean "*violent* force," or force capable of causing pain or physical injury to another person.[27] Four years later, in *United States v. Castleman*, the Court distinguished "minor uses of force" that suffice for a "misdemeanor crime of domestic violence" from the "substantial degree of force" required by violent felonies under ACCA.[28]

In engaging in a categorical approach inquiry into whether a conviction qualifies as a violent felony under the elements clause, the court will look at a state's criminal jurisprudence to determine whether the state conviction *necessarily* requires "the use, attempted use, or threatened use of physical force against the person of another" as an element.[29] If a survey of state case law reveals the state robbery statute in question has been interpreted and applied to offenders who only used *de minimis* force or mere intimidation, the conviction does not qualify as an ACCA predicate.[30]

Circuits have split over whether robbery by threat or intimidation is sufficient to "include as an element the use, attempted use, or threatened use of physical force against the person of another." For example, in *United States v. Parnell*, the Ninth Circuit concluded that Massachusetts armed robbery does not necessarily require "the actual, attempted, or *threatened* use of physical force" because the statute does not necessitate the weapon to be displayed or the victim

---

[24] 18 U.S.C. § 924(e)(2)(B)(i) (2012) ("[A]ny crime punishable by imprisonment for a term exceeding one year that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another . . . .").

[25] *See, e.g.*, United States v. Gabourel, 192 F. Supp. 3d 667, 674–76 (W.D. Va. 2016) (applying this analysis to a California statute requiring the defendant to "maliciously and willfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar . . . or inhabited camper . . . .").

[26] *See* Johnson v. United States, 559 U.S. 133, 140 (2010).

[27] *Id.*

[28] United States v. Castleman, 572 U.S. 157, 164–66 (2014).

[29] Hunter v. United States, 873 F.3d 388, 390 (1st Cir. 2017) (quoting United States v. Ellison, 866 F.3d 32, 37 (1st Cir. 2017)).

[30] *See, e.g.*, United States v. Gardner, 823 F.3d 793, 803–04 (4th Cir. 2016) (holding North Carolina common law robbery does not qualify as a violent felony because defendant's act of pushing the victim's hand off of a carton of cigarettes was sufficient "actual force" to uphold a common law robbery conviction).

to be put in fear.[31] Accordingly, Massachusetts armed robbery does not qualify as a "violent felony" under the ACCA elements clause.[32]

The other major area of controversy within elements clause jurisprudence (and the source of dispute in *Stokeling*) is whether the level of "physical force" required in a state offense rises to the level of "violent" force as defined by *Johnson*.[33] This issue commonly arises when a state criminalizes common law petty larceny offenses, like purse-snatching or pickpocketing, within its robbery statute.[34] For example, in *United States v. Mulkern,* the First Circuit looked at Maine robbery and determined from a survey of Maine case law that the crime could be accomplished with "*any* physical force."[35] The court interpreted "*any* physical force" to include *de minimis* physical force that falls below the threshold of "*violent* force" required by ACCA and *Johnson*.[36] Unable to look at the facts underlying the conviction, the categorical approach required the First Circuit to disqualify the entire Maine robbery statute as an ACCA predicate. [37]

Put another way, the categorical approach is interested in the "least forceful conduct" that can be criminalized under a state statute.[38] A state robbery offense will not qualify under ACCA if it criminalizes conduct that is less severe or substantially different from the conduct in the generic definition of robbery.[39] One of the original justifications for the categorical approach was protecting defendants from overbroad statutes.[40] Wide variations in state offense labeling

---

[31] United States v. Parnell, 818 F.3d 974, 980 (9th Cir. 2016). *But see* United States v. Harris, 844 F.3d 1260, 1268–69 (10th Cir. 2017) (holding robberies by threat or intimidation are violent felonies in Colorado because they constitute "threatened use of physical force").

[32] *Parnell*, 818 F.3d at 981.

[33] Johnson v. United States, 559 U.S. 133, 140 (2010).

[34] *See, e.g.*, United States v. Winston, 850 F.3d 677, 685 (4th Cir. 2017) (citing Jones v. Commonwealth, 496 S.E.2d 668 (Va. Ct. App. 1998)) (relying on a Virginia state case to hold that Virginia common law robbery did not qualify as a violent felony because "physical jerking" of a purse tucked into victim's arm, which caused victim to fall to the ground, did not rise to the level of "physical force" as cognized by ACCA); Austin v. United States, 280 F. Supp. 3d 567, 573–75 (S.D.N.Y. 2017) (discussing force requirements of pickpocketing, "tug-of-war," and purse-snatching compared to ACCA).

[35] United States v. Mulkern, 854 F.3d 87, 93–94 (1st Cir. 2017) (quoting Raymond v. State, 467 A.2d 161, 165 (Me. 1983)).

[36] *Id.*

[37] *Id.* at 94.

[38] Perez v. United States, 885 F.3d 984, 987 (6th Cir. 2018) ("Because our touchstone is whether the crime *requires* physical force, not whether the criminal conduct *involves* physical force, our test case becomes the least forceful conduct generally criminalized under the statute. The predicate conviction qualifies if that conduct involves violent physical force.").

[39] *See* United States v. Harris, 844 F.3d 1260, 1268 n.8 (10th Cir. 2017) (listing cases where state robbery offenses have been found to be violent felonies).

[40] Taylor v. United States, 495 U.S. 575, 585 (1990) (citing *Armed Career Criminal Legislation: Hearing on H.R. 4639 and H.R. 4768 Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 99th Cong. 15 (1986) (statement of James Knapp, Deputy Assistant Att'y Gen. of the United States).

risked lumping together misdemeanor and technical burglaries with the more serious offenses originally cognized by ACCA.[41]

B. *The Enumerated-Felonies Clause*

The second significant component of ACCA is the enumerated-felonies clause.[42] Applying the categorical approach to an enumerated clause case is a multi-step process where the sentencing court compares a state conviction for "burglary, arson, [or] extortion" to the "generic" definition of those crimes.[43] This inquiry is designed to ensure that the same conduct is criminalized across jurisdictions, despite the wide variation among state criminal codes and criminal offense labeling.[44]

The first step in any categorical approach analysis is to look at the state criminal statute of conviction.[45] If the statute is phrased in the alternative, then the court must enlist the "modified" categorical approach to determine if the state statute is indivisible or divisible.[46] To determine divisibility, the court must decide if the alternative phrasing is listing various "elements" or various "means" of committing the same crime.[47]

This process is best illustrated by a famous example from *Descamps v. United States.*[48] In this example, the Court creates a hypothetical statute that criminalizes assault with a deadly weapon and enumerates weapons including knives, guns, and clubs.[49] If a conviction can be obtained when the jury agrees a weapon was used, but deadlocks on whether the weapon was a gun or a knife, then the enumerated weapons are all different "means" of committing a sole *indivisible* crime.[50] When a statute is indivisible, the court proceeds to the next step in the analysis, only looking at the bare statutory elements.[51] On the other hand, if the disagreement over the type of weapon would result in a hung jury, then the type of weapon would be an "element" and the statute is *divisible* into multiple discrete offenses.[52] In the case of a divisible statute, the court is

---

[41] *Id.*

[42] 18 U.S.C. § 924(e)(2)(B)(ii) (2012) ("[A]ny crime punishable by imprisonment for a term exceeding one year that . . . is burglary, arson, or extortion, [or] involves use of explosives . . . .").

[43] U.S. SENTENCING COMM'N, *supra* note 3, at 1–2.

[44] *Taylor*, 495 U.S. at 588–89 (citing S. REP. NO. 98-190, at 5 (1983)); *see also* S. REP. NO. 98-190, at 20 (1983).

[45] *See* Mathis v. United States, 136 S. Ct. 2243, 2249–51 (2016).

[46] *Id.* at 2249 (citation omitted). This adds another layer of complexity to the already confusing categorical approach. Judges complain about the modified categorical approach in particular. *See* Lee, *supra* note 8, at 266–67.

[47] *See Mathis*, 136 S. Ct. at 2249–51.

[48] Descamps v. United States, 570 U.S. 254, 270–74 (2013).

[49] *Id.* at 271–72.

[50] *Id.* at 271.

[51] *See id.* at 274.

[52] *See id.*

permitted to look to certain designated "*Shepard* documents" in order to determine the exact elements of the prior conviction.[53] *Shepard* documents include charging documents, transcripts of plea colloquies, written plea agreements, jury instructions, and comparable judicial records.[54]

Once the prior conviction's elements are defined, the court must formulate the federal generic offense definition.[55] Each court will formulate the generic definition by relying on a wide range of legal sources.[56] For example, in *Taylor*, the Court defined generic burglary, regardless of the exact state definition or label, to include the basic elements of "an unlawful or privileged entry into, or remaining in, a building or other structure, with intent to commit a crime."[57] In coming to this conclusion, the Court relied on a range of sources, including the Model Penal Code, criminal law treatises by Blackstone and LaFave, English common law, and a survey of state robbery statutes in existence at the time ACCA was first enacted.[58]

Finally, with the generic definition in hand, the court engages in a matching exercise with the state conviction under review.[59] If the state conviction is a "clean match" to the generic offense definition, then the state conviction is deemed a violent felony that counts towards the three predicate offenses required for ACCA sentencing enhancement.[60] If the state conviction does not match or otherwise "sweeps more broadly" than the generic offense, the state conviction does not qualify as a violent felony and cannot be considered under ACCA.[61]

C. *The Residual Clause*

While not at issue in *Stitt*, *Sims*, or *Stokeling*, the residual clause merits brief mention in any significant discussion of ACCA jurisprudence.[62] Prosecutors once leaned upon the residual clause as a catchall ACCA provision when they could not clearly prove a statute was a violent felony under the enumerated-

---

[53] U.S. SENTENCING COMM'N, *supra* note 3, at 2.

[54] *Id.*

[55] *See* Taylor v. United States, 495 U.S. 575, 593–94 (1990) (formulating the federal generic offense definition of burglary).

[56] *See id.*

[57] *Id.* at 598.

[58] *Id.* at 593–94.

[59] U.S. SENTENCING COMM'N, *supra* note 3, at 1.

[60] United States v. Gattis, 877 F.3d 150, 158 (4th Cir. 2017).

[61] Descamps v. United States, 570 U.S. 254, 261 (2013).

[62] 18 U.S.C. § 924(e)(2)(B)(ii) (2012) ("[A]ny crime punishable by imprisonment for a term exceeding one year . . . that . . . involves conduct that presents a serious potential risk of physical injury to another . . . .").

felonies clause or elements clause.[63] But the residual clause is no longer viable.[64]

In one of the landmark ACCA cases, *Johnson v. United States*, the Supreme Court held that ACCA's residual clause is unconstitutionally vague and that imposing a sentence enhancement under the clause violated the Constitutional guarantee to due process.[65] In the wake of *Johnson*, many prisoners who were subject to ACCA due to prior convictions secured under the residual clause are now appealing their cases with some measure of success.[66]

Despite its invalidity, the ACCA residual clause remains relevant by analogy to similar provisions in other federal statutes. Recently, the logic of *Johnson* was the driving force behind invalidating a similar residual clause in the definition of "aggravated felony" in the Immigration and Nationality Act.[67]

III. PROCEDURAL BACKGROUND

In the October 2018 term, the Supreme Court granted certiorari in three ACCA cases. *Stitt* and *Sims*, consolidated for oral argument, represented classic enumerated-felonies clause disputes over the scope of generic robbery.[68] *Stokeling v. United States* proceeded under the elements clause with a dispute over the level of force required by Florida robbery.[69] Despite approaching different legal questions, these cases typify the same kinds of hair-splitting technicalities that plague ACCA and categorical approach jurisprudence. As a further testament to the complexity and lack of clarity in ACCA doctrine, these cases were all borne of circuit splits.[70]

---

[63] *See* Trevor Burrus, *Fifth Time's a Charm? Why the Court Should Strike Down the Armed Career Criminal Act as Unconstitutionally Vague*, CATO INST. (Feb. 26, 2015), https://www.cato.org/blog/fifth-times-charm-why-court-should-strike-down-armed-career-criminal-act-unconstitutionally [https://perma.cc/2G25-SYHW] (arguing that the residual clause "force[d] the judiciary, not the legislature, to define criminal offenses and establish their penalties"); *see also* Douglas A. Berman, *How Many Hundreds (or Thousands?) of ACCA Prisoners Could Be Impacted by a Big Ruling in Johnson?*, SENT'G L. & POL'Y (June 13, 2015, 10:07 AM), http://sentencing.typepad.com/sentencing_law_and_policy/2015/06/how-many-hundreds-or-thousands-of-acca-prisoners-could-be-impacted-by-a-big-ruling-in-johnson.html [https://perma.cc/68Y9-45NZ] (discussing judges' use of the residual clause to trigger ACCA).

[64] *See* Johnson v. United States, 135 S. Ct. 2551, 2563 (2015).

[65] *Id.*

[66] *See, e.g.*, United States v. Booker, 240 F. Supp. 3d 164, 172–73 (D.D.C. 2017) (stating that the inmate was not required to show that the sentencing court relied on the ACCA residual clause in order to seek post-conviction relief pursuant to the Supreme Court's ruling in *Johnson*); *see also infra* note 83 and accompanying text.

[67] *See* Sessions v. Dimaya, 138 S. Ct. 1204, 1215 (2018).

[68] *See* Brief for the United States at I, United States v. Stitt, 138 S. Ct. 1592 (2018) (Nos. 17-765 & 17-766).

[69] Brief for Petitioner at i, Stokeling v. United States, 139 S. Ct. 544 (2019) (No. 17-5554).

[70] *See infra* notes 75–76, 101–102 and accompanying text.

A. *Enumerated-Felonies Clause Cases*

In *Stitt* and *Sims*, the Court examined two state burglary statutes (Tennessee aggravated burglary and Arkansas residential burglary respectively) to determine whether they fell within the generic ACCA definition of burglary.[71] If the Tennessee and Arkansas burglary statutes matched the generic definition, then respondents' non-ACCA sentences would be upheld.[72] If the Court held the state convictions swept more broadly than the generic burglary, respondents' cases would be remanded for re-sentencing under ACCA.[73]

Both *Stitt* and *Sims* presented the question of "[w]hether burglary of a non-permanent or mobile structure that is adapted or used for overnight accommodation can qualify as burglary under the [enumerated-felonies clause of the] Armed Career Criminal Career Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii)."[74]

Notably, the Supreme Court's decision addressed a broad circuit split. Circuits divided on whether a habitable structure that is "non-permanent or mobile" qualified as burglary under the ACCA generic definition.[75] The Fourth, Eighth, and Ninth Circuits construed a narrow definition of robbery that excluded "a vehicle that is adapted for overnight accommodation of persons," while the Tenth and Fifth Circuits found that such structures fall within the scope of generic burglary.[76]

1. United States v. Stitt

In 2011, respondent Victor Stitt got into an argument with his girlfriend, then proceeded to "tr[y] to shove a loaded handgun into [her] mouth while threatening to kill her."[77] After the neighbors called the police, Stitt fled from the authorities.[78] Upon capture, Stitt was found with a .22 caliber handgun lying on the ground within his reach.[79]

Stitt was subsequently indicted and found guilty of one count of violating 18 U.S.C. § 922(g)(1), illegal possession of a firearm by a felon.[80] At sentencing, the district court found that Stitt had nine prior state convictions for

---

[71] For a further description of the matching exercise required by the categorical approach, *see supra* Part II.B.

[72] *See* Brief for the United States, *Stitt*, *supra* note 68, at 14–15.

[73] *See id.* at 39.

[74] *Id.* at I.

[75] Petition for Writ of Certiorari at 17, United States v. Stitt, 138 S. Ct. 1592 (2018) (No. 17-765).

[76] *Id.* at 18–19.

[77] Brief for the United States, *Stitt*, *supra* note 68, at 6.

[78] *Id.*

[79] *Id.*

[80] *Id.*

"violent felonies" under ACCA, and increased his sentence accordingly to 290 months imprisonment.[81] Of these nine predicate offenses, six were convictions for Tennessee aggravated burglary.[82]

Stitt appealed to the Sixth Circuit, where three of his nine felony convictions were disqualified because they had been designated as violent felonies under the voided ACCA residual clause.[83] Stitt successfully petitioned for review regarding his remaining six convictions for Tennessee aggravated burglary.[84] Over the dissent of six of the fifteen-judge panel, the court of appeals held Stitt's remaining six convictions for Tennessee aggravated burglary were not violent felonies under ACCA.[85]

The Tennessee aggravated burglary statute in question criminalized the burglary of any "habitation," defined as "any structure, including buildings, module units, mobile homes, trailers, and tents, which is designed or adapted for the overnight accommodation of persons."[86] The en banc majority concluded that no non-permanent or mobile structure, including those defined as "habitations" defined in the Tennessee statute, could fit within the narrow generic robbery definition of "building[s] or other structure[s]."[87]

As a result, Stitt went from having nine qualifying violent felonies to none.[88] His case was remanded for a non-ACCA sentence without the requisite fifteen-year mandatory minimum sentence.[89] The Government appealed the Sixth Circuit's decision.[90]

Justice Breyer authored the unanimous opinion of the Court, reversing the en banc decision of the Sixth Circuit.[91] The Court found that the relevant language of the Tennessee statute falls within the generic version of burglary as set forth in *Taylor*.[92] The Court's rationale rested primarily on *Taylor*'s proposition that Congress intended the definition of "burglary" to reflect the "generic sense in which the term [was] used in the criminal codes of most States" at the time ACCA was passed.[93] To that end, an appendix of 1986 state statutes included with the opinion shows that the majority of states included vehicles adapted or customarily designed for lodging within their state statutes.[94]

---

[81] *Id.* at 6–7.
[82] *Id.* at 6.
[83] Brief for the United States, *Stitt*, *supra* note 68, at 7.
[84] *Id.*
[85] *Id.*
[86] Petition for Writ of Certiorari, *Stitt*, *supra* note 75, at 4 (citing TENN. CODE. ANN. § 39-14-401(1) (Supp. 2001)).
[87] *Id.* at 5 (citing Taylor v. United States, 495 U.S. 575, 598 (1990)).
[88] *See* Brief for the United States, *Stitt*, *supra* note 68, at 6–7.
[89] *Id.* at 7.
[90] *Id.* at 2.
[91] United States v. Stitt, 139 S. Ct. 399, 408 (2018).
[92] *Id.* at 406.
[93] *Id.*
[94] *Id.* at 408.

After *Stitt*, the federal generic definition of burglary relevant for ACCA now includes any "vehicle that has been adapted or is customarily used for overnight accommodations" in addition to its traditional definition covering "dwellings."[95] Accordingly, Stitt's Tennessee state robbery conviction was reinstated as a predicate for ACCA enhanced sentencing.[96]

2. United States v. Sims

In 2014, Josh Daniel Sims broke into a home in St. Francis County, Arkansas and stole a rifle.[97] Sims was indicted and pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).[98] At sentencing, the district court determined in addition to two "serious drug crimes," Sims had also been convicted of two prior "violent felonies" for Arkansas residential burglary, yielding an ACCA enhanced sentence of 210 months.[99]

While conceding his two serious drug offenses, Sims appealed his Arkansas convictions for residential burglary, arguing that they were not predicate violent felonies.[100] The Eighth Circuit agreed, holding that the Arkansas residential burglary statute swept more broadly than the generic definition of burglary because it included "vehicles used or adapted for overnight accommodation."[101] In the court's view, no vehicular burglary could fall within the scope of generic burglary, even if limited to vehicles used as homes.[102]

As a result, Sims' two "violent felonies" were invalidated and his case was remanded back to the district court for sentencing as a non-violent offender.[103] The Government appealed Eighth Circuit's denial of en banc review.[104]

In its consolidated opinion with *Stitt*, the Court came to the same conclusion in *Sims* regarding the definition of federal burglary and its inclusion of "vehicles adapted for overnight use."[105] However, the Court took the additional step of remanding *Sims* to the lower courts because Sims alleged that the wording of the Arkansas statute—"a vehicle . . . [i]n which any person lives"—may be so broad as to include a car where a homeless person sleeps.[106] After *Mathis*, it is well settled that a statute including an ordinary vehicle like a car would be outside the generic definition of burglary.[107] The Court citing its status as a "court of review, not of first view," determined this "car" argument rested upon

---

[95] *Id.* at 403–04.
[96] *Id.* at 408.
[97] Brief for the United States, *Stitt*, *supra* note 68, at 11.
[98] *Id.*
[99] *Id.* at 11–12.
[100] *Id.* at 12.
[101] *Id.*
[102] *Id.* at 12–13.
[103] Brief for the United States, *Stitt*, *supra* note 68, at 12.
[104] *Id.* at 13.
[105] United States v. Stitt, 139 S. Ct. 399, 407 (2018).
[106] *Id.*
[107] *See id.*

a novel question of state law.[108] The Court vacated the Eighth Circuit's decision and remanded the case for consideration consistent with its decision.[109]

B. *Elements Clause Case*

The second ACCA case before the Court came from an appeal by a defendant out of the Eleventh Circuit.[110] The question presented was:

Is a state robbery offense that includes "as an element" the common law requirement of overcoming "victim resistance" categorically a "violent felony" under… the [the elements clause of the] Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i) (an offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another"), if the offense has been specifically interpreted by state appellate courts to require only slight force to overcome resistance?[111]

In *Stokeling*, the Supreme Court waded into another complex legal issue that split circuits. The Tenth and Eleventh Circuits directly conflicted with the Fourth Circuit on whether state robbery statutes that require "overcoming victim resistance" categorically require "*violent* force."[112] More specifically, the Ninth Circuit split with the Eleventh Circuit decision below on the exact Florida robbery statute in question and whether it qualifies as a "violent felony" under ACCA.[113]

1. Stokeling v. United States

In 2016, Denard Stokeling pled guilty to being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. 922(g)(1) and 924(e)(1) after being caught burglarizing a restaurant with an accomplice in Miami, Florida.[114] The sentencing court found Stokeling was eligible for an ACCA enhancement because he had prior convictions for two "violent felonies" and one "serious drug offense."[115] Specifically, Stokeling had one conviction for unarmed Florida robbery, one conviction for armed robbery, and one conviction for the sale, manufacture, or delivery of cocaine.[116] Stokeling objected to his Florida unarmed robbery conviction qualifying as a violent felony, claiming that the

---

[108] *Id.* at 407–08 (citing Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005)).

[109] *Id.* at 408.

[110] Brief for the Petitioner, *Stokeling*, *supra* note 69, at 10.

[111] *Id.* at i.

[112] Petition for Writ of Certiorari at 20–28, Stokeling v. United States, 139 S. Ct. 544 (2019) (No. 17-5554).

[113] *See* Brief for the Petitioner, *Stokeling*, *supra* note 69, at 10 (citing United States v. Geozos, 870 F.3d 890, 898–901 (9th Cir. 2017)).

[114] *See* Brief for the United States in Opposition at 2, Stokeling v. United States, 139 S. Ct. 544 (2019) (No. 17-5554).

[115] *Id.* at 3–4.

[116] Brief for the United States at 2, United States v. Stokeling, 684 F. App'x 870, 871 (11th Cir. 2017), *cert. granted*, 138 S. Ct. 1438 (2018), and *aff'd*, 139 S. Ct. 544 (2019) (No. 16-12951-CC).

offense did not categorically require the use of violent force.[117] In response, the Government argued that Florida case law shows that the Florida unarmed robbery statute in question requires "resistance by the victim that is overcome by the physical force of the offender."[118]

Despite the fact that Florida robbery requires "physical force" sufficient to overcome the victim's resistance, the district court agreed with Stokeling that even "physical force" that overcomes resistance is not categorically equivalent to "*violent* force" cognized by ACCA and *Johnson*.[119] The district court pointed to prior Florida cases where prying the fingers of someone clutching dollar bills or engaging in a tug-of-war was sufficient *physical* force to overcome victim resistance without necessarily qualifying as *violent* force.[120]

The United States appealed the district court decision and the Eleventh Circuit vacated and remanded Stokeling's case for re-sentencing under ACCA.[121] Stokeling appealed the Eleventh Circuit's decision with the same "level of force" argument he used successfully at the district court level.[122]

In a 5–4 decision, the Court affirmed the judgment of the Eleventh Circuit, finding that Florida robbery qualifies as an ACCA predicate offense under the elements clause.[123] Justice Thomas authored the majority opinion, which rejected Stokeling's attempt to distinguish "physical force" from ACCA predicate "violent force."[124] Instead, Thomas opined that "physical force" includes any amount of force used to overcome victim resistance, which the Florida robbery law satisfied in this case.[125] Thomas's rationale focused on the common law definitions of force, noting that "[t]he common law also did not distinguish between gradations of 'violence'" and citing numerous treatises using the words "violence" and "force" interchangeably.[126] The majority concluded that Congress intended for ACCA to incorporate these common law definitions into its federal generic definition of robbery.[127]

In her dissent, Justice Sotomayor argued forcefully that the Florida robbery statute covers too broad a range of conduct to qualify as a "violent felony."[128] Sotomayor rejected the majority's conclusion that Congress adopted common law definitions of force into ACCA.[129] She argued that even accepting the

---

[117] Brief for the United States in Opposition, *supra* note 114, at 4.
[118] *Id.* at 6–7 (citing Robinson v. State, 692 So. 2d 883, 886 (Fla. 1997)).
[119] *Id.* at 4.
[120] Brief for the United States at 30–31, Stokeling v. United States, 139 S. Ct. 544 (2019) (No. 17-5554).
[121] Brief for the United States in Opposition, *supra* note 114, at 5.
[122] *See id.* at 4–5.
[123] Stokeling v. United States, 139 S. Ct. 544, 555 (2019).
[124] *Id.*
[125] *Id.*
[126] *Id.* at 550.
[127] *Id.* at 551.
[128] *Id.* at 556 (Sotomayor, J., dissenting).
[129] Stokeling, 139 S. Ct. 544, 559 (2019) (Sotomayor, J., dissenting).

premise that ACCA did originally intend to incorporate common law definitions of force into its definition of violent felony, the majority had ignored *Johnson*, which clearly elevated the degree of force required to a "heightened degree of force."[130]

IV. PUTTING THE CATEGORICAL APPROACH BACK INTO PERSPECTIVE

A. *ACCA and the Categorical Approach: First Principles*

The Armed Career Criminal Act was originally drafted in 1984 as part of the Comprehensive Crime Control Act.[131] The bill reflected the growing anxiety about rising crime levels, especially the fear that a large percentage of crimes involving theft or violence were committed by a small number of dangerous "career" offenders.[132] As such, Congress passed ACCA to impose long terms of incarceration for what were perceived to be the most violent and dangerous of these "career" offenders—those that illegally possessed firearms.[133] Importantly, ACCA was specifically drafted with robbery and burglary in mind because these were perceived to be crimes that presented the highest risk of victimization by an armed offender.[134]

At its core, the fundamental purpose of ACCA is to classify dangerous felons whose crimes are severe enough to warrant sentencing enhancement.[135] The categorical approach is merely a mechanism derived from the text and legislative history of ACCA to achieve this goal, while also safeguarding against potential unfairness that would result from a conduct-based approach.[136]

To facilitate the categorical approach, Congress adopted modern views of generic burglary and other crimes "roughly corresponding" to the definitions of the crime found in most states at the time of enactment.[137] This was done because it "both prevented offenders from invoking the arcane technicalities of the common-law definition of burglary to evade the sentence-enhancement provision, and protected offenders from the unfairness of having enhancement depend upon the label employed by the State of conviction."[138] This statement

---

[130] *Id.* at 558–61.

[131] *See* Evans, *supra* note 5, at 629.

[132] *Id.* at 630–33.

[133] *See* Brief for the United States, *Stitt*, *supra* note 68, at 3 (citing H.R. REP. NO. 98-1073, at 26901 (1984)).

[134] *See* Evans, *supra* note 5, at 630.

[135] *See* Taylor v. United States, 495 U.S. 575, 581, 587–88 (1990).

[136] *See id.* at 590. Nor is there any indication that Congress ever abandoned its general approach, when designating predicate offenses, of using uniform, categorical definitions to capture all offenses of a certain level of seriousness involving violence or an inherent risk thereof, and that are likely to be committed by career offenders, regardless of technical definitions and labels under state law. *Id.*

[137] *Id.* at 589.

[138] *Id.*

by the Court in *Taylor* encompasses the chief purpose and first principle of the Court's categorical approach to ACCA.

B. *First Principles Applied*

The categorical approach serves ACCA's function of designating "career offenders" who commit violent felonies as efficiently as possible while striving to minimize negative externalities.[139] The courts should use the categorical approach to interpret the designated predicate offense categories in a way that will *include* offenders who belong in the "violent career offender" category by not letting them escape justice on a technicality, while at the same time *excluding* offenders who do not warrant such severe sentence enhancements.[140] This simple goal has been obscured by years of abstract legal doctrine, and the Supreme Court has missed another opportunity to explicitly ground ACCA doctrine in practical principles in its three most recent ACCA cases.[141]

1. *Including Those Who Do Belong Under ACCA:* Stitt *and* Sims

In striving to properly designate "career offenders" with minimum negative externalities, the Court properly decided in favor of the government in *Stitt* and *Sims* by including burglary of "vehicles adapted for overnight accommodation" within the generic definition of burglary.

The categorical approach intends to prevent offenders from invoking "arcane technicalities of the common-law" to evade the sentence enhancement provision, while also protecting offenders from the unfairness of sentencing based on state statutory labeling alone.[142] The abstract debate of whether a "mobile home" is actually a "habitation" looks more like the invocation of a legal technicality than a justified defense against an overly broad state statute.

In *Stitt* and *Sims*, the Court properly avoided the pitfalls of arcane common law. Citing *Taylor*, the Court reasoned that Congress intended ACCA to include a "uniform definition of burglary [to] be applied to all cases in which the Government" seeks enhanced sentencing and that it "must include more" than just the "classic" common-law definition of breaking into a dwelling at night with intent to commit a felony.[143] This common law definition including only "dwellings," the Court noted, would be of "little relevance to modern law

---

[139] *See id.* at 587–90. This Note defines "negative externalities" as scenarios where relatively minor criminals are unfairly swept up in an overly broad statute, or conversely, dangerous violent felons escape the intended ACCA sentence enhancement.

[140] *See id.*

[141] *See* Tristan v. United States, No. 6:16-cv-01137-AA, 2018 WL 3117637, at *3 n.2 (D. Or. June 25, 2018).

[142] Taylor v. United States, 495 U.S. 575, 589 (1990).

[143] United States v. Stitt, 139 S. Ct. 399, 405 (2018).

enforcement concerns."[144] Instead, the Court focused on the state criminal codes contemporaneous to the passage of ACCA.[145]

Moreover, the pedantic debate over whether a mobile home is a home as defined by its "use or purpose" or a vehicle by its "form or nature" is the exact kind of abstraction the categorical approach should depart from.[146] Surely Congress did not intend for the distinction of "violent felony" to hinge on whether a discerning robber chose to rob the same habitation with or without wheels.[147] Furthermore, to the extent Congress was concerned about the inherent risk of violence and victimization by an armed burglar, excluding mobile homes over a technical definition of "habitation" seems inapposite to the goal of incarcerating dangerous offenders.[148]

The Court properly incorporated *Taylor*'s logic on this point into its opinion. Acknowledging that *Taylor* "viewed burglary as an inherently dangerous crime because burglary creates the possibility of a violent confrontation between the offender and an occupant, caretaker, or some other person who comes to investigate," the Court recognized that an offender who breaks into a mobile home, RV, camping tent, or other lodging structure "runs a similar or greater risk of violent confrontation."[149]

In sum, while failing to simplify or advance categorical approach doctrine, the Court's decisions in *Stitt* and *Sims* embodied a reasonable application of the categorical approach's first principles expressed in *Taylor*. At very least, ACCA critics can rejoice that these cases did not further complicate the doctrine, a quality not shared by other relatively recent ACCA decisions like *Mathis* and *Descamps*.

2. *Excluding Those Who May Not Belong Under ACCA: Stokeling*

On the other hand, a more purpose-driven interpretation of the categorical approach would have counseled in favor of the criminal defendant and led the Court to the opposite result of its holding in *Stokeling*. By lowering the threshold of force necessary for an offense to qualify as a violent felony under ACCA, *Stokeling* expands ACCA's reach to cover an even greater number of state offenses. In this way, *Stokeling* presents exactly the type of ill the categorical approach was designed to prevent—comparatively innocent offenders being swept up into an overly broad state criminal statute.[150]

---

[144] *Id.* (citation omitted).

[145] *See id.*

[146] *See* Brief for the United States, *Stitt*, *supra* note 68, at 16.

[147] *See id.* at 11 (referencing how Judge Sutton pointed out in his en banc dissent that "the majority's conclusion 'produces th[e] head-scratching outcome' that 'Tennessee's lesser crime of "burglary of a building" qualifies as generic burglary while aggravated burglary—i.e., burglary of a habitation—'does not'").

[148] *See id.* at 3.

[149] United States v. Stitt, 139 S. Ct. 399, 406 (2018) (citation omitted).

[150] *See* Taylor v. United States, 495 U.S. 575, 589 (1990).

While the majority opinion remains mired in abstraction on the proper definition of "force," Justice Sotomayor's dissent incisively captures the purpose of ACCA. She writes: "[ACCA] does not look to past crimes simply to get a sense of whether a particular defendant is generally a recidivist; rather, it looks to past crimes to determine specifically 'the kind or degree of danger the offender would pose were he to possess a gun.'"[151] In other words, the crime should show an "increased likelihood that the offender is the kind of person who might deliberately point [a] gun and pull the trigger."[152]

Congress did not intend for the type of low-level "glorified pickpockets" encompassed by the Florida robbery law to be subject to a 15-year mandatory prison sentence under ACCA.[153] Stealing a necklace, shoplifting, purse-snatching, and the like "do not bear the hallmarks of being the kind of people who are likely to point a gun and pull the trigger," [154] and should be excluded from ACCA enhanced sentencing under the foundational purposes of the categorical approach. Focusing exclusively on the metaphysical definition of force obfuscates a simple truth recognized by *Taylor*: petty criminals should not be subject to a "career criminal" statute designed for dangerous violent felons prone to gun violence.[155]

While failing to move the ball forward on ACCA, Justice Sotomayor's dissent offers some degree of hope for ACCA's many critics. At very least, it shows that a coalition on the Court across ideologies recognizes the need to return a measure of common sense and practicality to ACCA jurisprudence. Ideally, her opinion marks the first step in a shift towards mitigating some of ACCA's harsh results by returning the categorical approach to its first principles expressed in *Taylor*.[156]

V. CONCLUSION

Years of adding complexity to ACCA doctrine has rendered the categorical approach increasingly "unworkable" and "abstract and untethered to the real world."[157] The Supreme Court's approach to *Stitt, Sims, and Stokeling* presents a missed opportunity to change this narrative around ACCA and the categorical approach. This Note advocates a modest proposition to ground the doctrine back

---

[151] Stokeling v. United States, 139 S. Ct. 544, 559 (2019) (Sotomayor, J., dissenting) (citation omitted).

[152] *Id.* (citing Begay v. United States, 553 U.S. 137, 146 (2008)) (alteration in original).

[153] *Id.*

[154] *Id.*

[155] *See* Evans, *supra* note 5, at 630–33.

[156] *See supra* Part IV.A.

[157] *See, e.g.*, Tristan v. United States, No. 6:16-cv-01137-AA, 2018 WL 3117637, at *3 n.2 (D. Or. June 25, 2018).

in a degree of practicality: refocus on the categorical approach's exceedingly practical fundamental principles rather than its "maddening" legal formalism.[158]

Critics will always struggle to accept that dangerous criminals (who would be properly designated as such by a conduct-based approach) may escape enhanced sentencing under the categorical approach.[159] However, until Congress changes ACCA, this is exactly within the fundamental purposes of the categorical approach—to prevent one shoplifter from being sentenced as a violent felon even if ninety-nine bank robbers get lesser sentences.[160] The solution to this result is not to add more complexity to an already oversaturated legal doctrine, but to encourage states to more carefully define criminal statutes and courts to be more purpose-driven in their analytical approach to ACCA cases.

---

[158] *Id.*

[159] *See supra* notes 5 and 9.

[160] *See* Taylor v. United States, 495 U.S. 575, 581–83 (1990).